STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY LAMONT HARRIS,

Defendant-Appellant.

UNPUBLISHED
October 11, 2005

No. 261232
Chippewa Circuit Court
LC No. 04-007738-FH

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault on a prison guard, MCL 750.197(c). He was sentenced as a habitual offender, third, MCL 769.11, to two to eight years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that defendant was the person who assaulted the prison guard. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

At trial, the prosecution presented evidence that as the guard was passing outside a cell that defendant shared with another inmate, he heard someone spit and was hit with "a fairly good amount of liquid" on his left arm and sleeve. This liquid came from a mail slot over the door. The guard testified that he immediately opened the observation window on the cell door and saw defendant standing on a footlocker on the side from which the liquid came, leaning over towards the door. Defendant's cellmate was at the back of the cell. Defendant then made a statement to the guard to the effect of "I got you that time." The guard also testified that he was very familiar with defendant, could readily distinguish the faces of defendant and his cellmate, and had no doubt in his mind that defendant, rather than his cellmate, was the person he saw standing on the footlocker speaking to him. While defendant elicited testimony that the guard did not actually see defendant spit at him, reasonable inferences drawn from the overwhelming circumstantial evidence suffice to prove defendant's identity. See *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). Therefore, viewed in the light most favorable to the

prosecution, the evidence presented could easily persuade a reasonable jury that defendant was the spitter. *Wolfe*, *supra*.

Defendant next argues that the trial court erred when it allowed an expert to explain why she did not find evidence of saliva on the guard's clothing. We disagree. "The determination regarding the qualification of an expert and the admissibility of expert testimony is within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion." *People v Ray*, 191 Mich App 706, 707; 479 NW2d 1 (1991). To offer expert testimony, "the witness must be an expert, there must be facts in evidence that require or are subject to examination and analysis by a competent expert, and there must be knowledge in a particular area that belongs more to an expert than an ordinary person." *Id*.

Here, the prosecution's expert testified that she had worked at the Michigan State Police Laboratory for seven years and had tested Department of Corrections (DOC) officers' uniforms for bodily fluids five to seven times a year throughout her time at the lab. She further stated that, although not all of those uniforms were tested for saliva, she knew of only one instance where she had successfully found evidence of saliva. The prosecution's expert was clearly an expert by virtue of her experience testing the uniforms for bodily fluids, and the information about their poor absorbency helped the jury understand the absence of saliva. Further, a particular material's absorbency and the reliability of negative results after testing the material are matters better explained by an expert than left to a lay jury's common sense. Therefore, the trial court did not abuse its discretion when it permitted the expert to testify regarding her knowledge of the absorbency of DOC uniforms.

Defendant also argues that the trial court erred when it permitted the guard to testify that defendant was incarcerated in a segregated or punitive unit, that he was a long-term resident of segregated units, and that he brought attention to himself by misbehaving. We disagree. We review evidentiary decisions for abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000). Here, the guard testified that he was working in a special, punitive unit for prisoners who could not get along with those in the general prison population. Defendant did not object to this testimony, which merely presented background information to enable the jury to understand the crime's context. *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). Therefore, its inclusion in evidence did not constitute plain error. MRE 103(d).[1] Moreover, the setting of the confinement and the relative roles of the guard and segregated prisoner explained

[1] Defendant spat on a prison guard through the mail slot of an iron door, bragged about it through the door's observation window, and later argued that the guard's uniform lacked any evidence of saliva. Therefore, any meaningful description of this case's basic facts necessarily includes information suggesting that defendant was being severely punished. In turn, this information would lead any intelligent individual to surmise that he had some serious character flaws. Restricting evidence of other acts should shield a defendant from the prejudice of past misdeeds, but it should not prevent a prosecutor from presenting a complete and intelligible picture of events. A prosecutor is not required to sterilize its evidentiary presentation against every attenuated indication of a defendant's checkered past. *Sholl*, *supra*. In this case, such a requirement would have left the jury to decide the case based on detached abstract principles rather than facts.

defendant's animosity and motive against the guard better and less prejudicially than an evidentiary parade of each confrontation between the men. The evidence that defendant regularly brought attention to himself by misbehaving and that the guard had extensive exposure to defendant erased any doubt that the guard misidentified the spitter. Identification and motive are permitted uses of other-acts evidence under MRE 404(b)(1).

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ William B. Murphy